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A. Orford, ed., International Law and Its Others, Cambridge University Press Cambridge 2006 xiv + 420 pp., UK£ 60 / US\$ 110. ISBN 0-521-85949-2.

Wouter Werner

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Layton and Mercer's *European Civil Practice* is an impressive book – and not only for its size! It gives practitioners and scientists a good overview of the Brussels-Lugano regime with many references to literature and case law, also from other European countries. It certainly is an important book, together with other studies on European Procedural law, such as Jan Kropholler's *Europäisches Zivilprozessrecht* and *Compétence et execution des jugements en Europe* by Hélène Gaudemet-Tallon. In my view, however, these two books are more accessible than Layton and Mercer's edition. Finally, the publication of 21 national reports on procedural law in the second volume is interesting, but it is not really related to the topics discussed in the first volume. Volume 2 is interesting for comparative purposes, but not really necessary for understanding the Brussels-Lugano regime. My advice to the general editors would be to disconnect these two volumes and to focus on the first volume for new editions, hopefully sooner than in 15 years.

P. Vlas
Editor-in-Chief

A. ORFORD, ed., *International Law and Its Others*, Cambridge University Press, Cambridge 2006, xiv + 420 pp., UK£ 60 / US\$ 110. ISBN 0-521-85949-2.

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What have Carl Schmitt, Abraham and Isaac, post-Glorious Revolution England, humanitarianism, corporate power, Creole consciousness, unlawful combatants, indigenous Australians, secrets of the fetish, Richard Rorty, and female genital mutilation in common? The short – and superficial – answer is that they all appear in Anne Orford's edited volume *International Law and Its Others*. As the wide range of topics identified above indicates, the term 'others' in the title of this book should not be understood in a narrow sense: it covers persons or groups that are 'other' to international law, but also other traditions, narratives, anxieties, disciplines, and much more. Still, *International Law and Its Others* is more than a random collection of essays on the boundaries of international law. The book has a distinct identity, already contained in the very question it poses: how does international law relate to its others? Posing such a question, as Orford sets out in the introductory chapter, grounds the book in a 'critical project which has an established trajectory within international law' (p. 3).

One of the central aims of critical, 'new stream' approaches has always been to critique international law's pretensions to inclusiveness and objectivity, as to reveal and give voice to what is forgotten, suppressed, obscured by mainstream international legal discourse. Such a mission can also be found throughout Orford's edited volume. An example is Ian Duncanson's fascinating analysis of the forgotten history of sovereignty

and politics as it was developed after the Glorious Revolution. In response to experiences of civil disorder, Duncanson demonstrates, writers from Locke to Shaftesbury, as well as the Scottish literati, searched for cultural solutions to the problems of peace and stability: 'A whole way of life was developed, creating social spaces, manners of address and the choreography of bodies designed, not to produce consensus, but to allow differences to be negotiated ...' (pp. 57, 58). Duncanson invites international lawyers to engage with this forgotten history, to rediscover politeness – and not just policy – as part of the polity, and to critically rethink the ways in which scholars have reproduced the Westphalian myth of unitary sovereignty. Another, though quite different, example of a forgotten (or suppressed) history of international law is offered by Frédéric Mégret, who provides a post-colonial analysis of international humanitarian law. Mégret attempts to demonstrate that practices such as Guantánámo are less foreign to international humanitarian law than many believe. Based on a reading of the genesis of modern humanitarian law, he critiques narratives of progress that project humanitarian law as an ever more inclusive legal regime. Instead, he offers a reading in which the rise of international humanitarian law goes hand in hand with practices of exclusion and colonial expansion. The legacy of this colonial history can still be found, Mégret argues, in the way in which contemporary humanitarian law 'projects a fantasy of soldiering' that conforms 'to what is essentially a Western stereotype of what waging war is' (p. 307). Such dominant fantasies have important repercussions for those that use political violence in different, 'uncivilized' forms.

That 'otherness' sometimes works in complex and dialectical ways, is illustrated by Liliana Obregón's chapter on the *civilisation* discourse in 19th century Latin America. Obregón studies the emergence of a distinct legal consciousness by the American-born elite of Spanish descent in post-independent Latin-America (the 'Creole legal consciousness'). A central tenet of the Creole legal consciousness was 'the will to civilize'; the desire to complete the civilization that was left half-way by the Spanish colonizers. Part of this civilizing mission was the anxiety to gain recognition by Western powers in order to avoid exclusion of Latin-American states from the (legal) community of civilized nations. At the same time, however, it comprised the will to be recognised as 'other'; as independent and distinct from Europe. Obregón demonstrates how this complex will to civilize appears in different ways in the writings of Carlos Calvo, Manuel Atanasio Fuentes and José María Samper, thus providing new perspectives on the role of 'civilisation' in 19th century international legal discourse.

Such critical and historical approaches to international law make Orford's book interesting in and of itself. The volume contains several chapters that challenge established orthodoxies in international legal discourse, while pointing at new directions and perspectives to discuss issues of (1) sovereignty, (2) human rights, (3) the relation to the other, and (4) history (the four parts in which the book is divided). However, the book is also interesting for another reason. It tells something about current discourses within critical legal scholarship, about the basic concerns and anxieties of an approach that by now has gained recognition (though not always approval) in the discipline. One

such concern, it appears, relates to what is often presented as the increasing openness of the international legal order towards 'the other'; towards groups, discourses, cultures, topics, etc. that traditionally fell outside the boundaries of international law. What has the growing inclusiveness of international law and politics brought us? What sacrifices had to be made for the inclusion of concepts such as human rights in different areas of international law? What have been the effects, e.g., in terms of responsibilities, of the inclusion of critical approaches such as feminism or humanitarianism in international legal parlance and in the bureaucratic apparatus of international law and politics?

Such questions are taken up, *inter alia*, in the chapter by Dianne Otto, studying the effects of the engagement of women's rights advocates with human rights law. Otto examines three strategies that have been used by feminist human rights advocacy since 1945. The first strategy, used by the 1946 Commission on the Status of Women, was to ensure explicit reference to rights that were believed to be specific to women's experience, while operating within an overarching framework of equality between men and women. The second strategy consisted of the promulgation of a specialized women's human right instrument, resulting in the adoption of the Convention on the Elimination of All Forms of Discrimination against Women by the General Assembly in 1979. The third strategy, emerging from the late 1980s on, was what Otto calls the 'mainstreaming' of women's human rights; a strategy that promoted the recognition that women's rights are human rights. The results of the different strategies, Otto argues, is unsettling: so far, feminist attempts to make international human rights law more inclusive have reproduced unequal relations of gender power. They all failed to resolve the 'feminist conundrum': 'in reflecting women's present gendered experience of human rights violations, human rights law repeats the marginalizing gender tropes that entrench and naturalize women's inequality' (p. 350). Yet, Otto refuses to give up the attempts to open up international human rights law. If feminist engagement could effectively be based on a radical break with conventional understandings of 'sex' and 'gender', if such categories could be understood in a denaturalised and hybrid fashion, it might be possible to make human rights law more inclusive: 'hope is not lost' (p. 356).

Critique and new directions for future engagement also figure prominently in David Kennedy's chapter on the institutionalisation of humanitarianism. Building on arguments already developed in *The Dark Sides of Virtue*,¹ Kennedy argues that humanitarians should leave behind the self-image of outsiders who speak law or truth to power. Instead, they should acknowledge their role as bearers of power and the ever looming possibility that they are engaged in practices that sustain structures of domination ('We have met the empire, and it is us', p. 151). At the same time, Kennedy cherishes human rights as a basis to critique existing claims to justice and as a source for responsible, self-critical humanitarianism. Humanitarianism, then, transcends the moral certainty of the do-gooder; it becomes the uncertain, always unfinished basis from which to assume responsibility and to critique existing pretensions of justice. The institutionalisation of human rights forms the basis of Florian's Hoffmann's chapter as well. Hoffmann takes as a starting point that 'today, human rights are a fact of the world' (p. 225). However,

rather than going forward as it were, enquiring the consequences of the normalisation of human rights, Hoffmann takes a step back, asking what, if any, epistemological and deontological validity human rights could have. Is it possible to accept the relativist critique voiced by critical and post-modern scholars and still 'believe' in human rights? Based on Rorty's notion of the liberal ironist and Koskenniemi's 'culture of formalism', Hoffmann forcefully argues for a human rights activism that accepts the lack of objective foundations. In this way, human rights are to be used, not as a form of fixed knowledge, but as a permanent source for critique: 'no hegemonic imposition, no rationality, no law, no judgment, no argument is ever safe from being challenged by the many uses of human rights' (p. 244). Human rights essence consists in their 'enabling transgression' (p. 244); in their potential as a permanent source of (self) critique. This emancipating potential of human rights also makes it possible to transcend their institutionalisation and to thus remain critical on the facts of our present world.

The final chapter of *International Law and Its Others* – written by Hilary Charlesworth and David Kennedy – opens with an understatement: 'This book is hard to conclude' (p. 401). It is indeed. It is also hard to review, as the present author can attest. The broad conception of 'the other' has resulted in a wide variety of sometimes radically different chapters that escape any definite conclusions. Those who look for a tightly knot-together collection of chapters will therefore be disappointed. However, as I have tried to indicate above, readers looking for challenging discussions on the boundaries of contemporary international law will enjoy *International Law and Its Others*. It opens sometimes new, at other times long forgotten, or suppressed, perspectives on the international legal order. Moreover, it contains refreshing contributions on the current state of international law, while suggesting new roads for self-critical legal scholarship.

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1. D. Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, NJ, Princeton University Press 2004).